

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERISOURCEBERGEN CORPORATION,

Plaintiff,

- v. -

WARRIOR FREIGHT SYSTEMS LLC,

Defendant.

22 Civ. ()

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, AmerisourceBergen Corporation (“ABC”), by and through its undersigned counsel, Kennedy Lillis Schmidt & English, allege upon information and belief as follows:

INTRODUCTION

1. This action arises from damage to pharmaceuticals (“Cargo”) owned by ABC and tendered for shipment to Warrior Freight Systems LLC (“Warrior Freight”).

PARTIES

2. ABC was and is a Delaware corporation with an office for the transaction of business at 1 West First Avenue, Conshohocken, Pennsylvania 19428.

3. ABC owned the Cargo.

4. Warrior Freight was a Michigan corporation with an office for the transaction of business at 30335 Stephenson Highway, Madison Heights, Michigan 48072.

5. ABC hired Warrior Freight to transport the Cargo pursuant to a 10 March 2020 Carrier Service Agreement (“CAS”), Bill of Lading No. 00000000000111114 (“Bill of Lading”), and Warrior Freight PRO No. 0008749.

6. Warrior Freight is registered with the U.S. Department of Transportation as an interstate carrier with U.S.D.O.T. number 2988130.

7. At all relevant times, Warrior Freight maintained shipping routes through the state of New York.

JURISDICTION & VENUE

8. This action involves interstate transportation of goods by motor carrier. This Honorable Court has jurisdiction and venue is proper pursuant to 49 U.S.C. § 14706(d) (“Carmack Amendment”) and 28 U.S.C. § 1331.

BACKGROUND

9. In March 2020, ABC and Warrior Freight entered the CSA.

10. In the CSA, ABC agreed, *inter alia*, to hire Warrior Freight to carry ABC’s affiliates’ cargos, and Warrior Freight agreed, *inter alia*, to do so subject to the Agreement’s terms.

11. In the CSA, ABC and Warrior made ABC’s affiliates third-party beneficiaries of the Agreement.

12. In or around June 2020, ABC hired Warrior Freight to transport the Cargo from ABC’s facility in Lockbourne, Ohio to ABC’s facility in Orlando, Florida by truck.

13. On or around 24 June 2020, Warrior Freight issued the Bill of Lading for the transfer of the Cargo from Lockbourne to Orlando.

14. Special Instructions on the Bill of Lading indicated that the Cargo was to be transported in a refrigerated trailer with the following specifications “Temp Controlled (Celsius) 2° C - 8°C, set at 5°C, Temp Controlled (Fahrenheit) 35.6°F - 46.4°F, set to 41°F.”

15. On 24 June 2020, Warrior Freight – in consideration of certain agreed freight charges duly paid by ABC – picked up, received, and accepted the Cargo, then in good order and condition, at the ABC’s Lockbourne facility pursuant to their agreement to carry the Cargo to ABC’s facility in Orlando.

16. The Cargo was loaded and stowed in refrigerated trailer number RT7022 (“Trailer”), with seal number A0021622 (“Seal Number”).

17. The Carrier Pre-Trip Inspection Form indicates that the temperature set point was correct per the Bill of Lading at the time of loading.

18. Upon the Cargo’s delivery to ABC’s facility in Orlando, the Cargo was discovered to have been damaged in transit due to temperature excursion.

19. The Cargo’s damage caused ABC to suffer losses totaling \$490,777, as nearly as can now be determined.

CAUSE OF ACTION – BREACH OF CONTRACT OF CARRIAGE
SUBJECT TO THE CARMACK AMENDMENT

20. Paragraphs 1 through 20 are incorporated by reference as though fully set forth at length herein.

21. As interstate carriers of merchandise for hire subject to the Carmack Amendment, Warrior Freight was obligated by the Carmack Amendment and the CSA to properly and safely transport, handle, carry, keep, care for, discharge, and deliver the Cargo in the same good order and condition as when received by them.

22. Warrior Freight breached their applicable duties detailed in Paragraph 21 by allowing the Cargo to be damaged in transit as it was.

23. As a direct and proximate cause of Warrior Freight’s breach of their applicable duties detailed in Paragraph 21, ABC sustained damages, as nearly as can now be determined, no part of which has been paid although duly demanded, in the sum of \$490,777.

WHEREFORE, ABC demand judgment in their favor and against Warrior Freight in the sum of \$490,777, plus interest, costs, disbursements, and such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: New York, New York
June 22, 2022

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